



**AILA Verification and Documentation Liaison Committee
Joint Meeting with USCIS Verification Division and ICE Homeland Security Investigations
Washington, DC
Agenda
April 15, 2014**

On April 15, 2014, The American Immigration Lawyers Association (AILA) Verification and Documentation Liaison Committee met with the USCIS Verification Division and ICE Homeland Security Investigations in Washington, DC. The questions below were submitted by AILA and responses were provided by the USCIS Verification Division.

1. **Expiration Date for Immigrant Visa Holders with I-551 Stamp.** The M-274 Handbook for Employers explains on page 13, that an employer may accept a valid foreign passport with either a temporary I-551 stamp or a machine readable immigrant visa (MRIV), and directs the employer to “reverify when the stamp or MRIV expires, or one year after the issue date if the stamp or MRIV does not contain an expiration date.”¹ However, pages 57-58 state, “The temporary Form I-551 MRIV is evidence of permanent residence for one year from the date of admission.” In the attached example, a conditional permanent resident was admitted in CR-1 status on 12/31/2013, with an immigrant visa that was issued on 12/9/2013 that expires on 4/24/2014. The face of the MRIV states “upon endorsement serves as temporary I-551 evidencing permanent residence for 1 year.” Although the passport was stamped with the CR-1 endorsement, the visa itself was not.
 - a. When is the employer obliged to reverify the employee?
 - April 24, 2014, when the MRIV expires?
 - December 31, 2014, one year after the passport endorsement?
 - December 9, 2014, one year after issuance of MRIV?

USCIS Response: A machine readable immigrant visa (MRIV) is usually issued with the following language on the visa: “UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR 1 YEAR.” The one year time period begins from the date of admission. If in the rare instance that an immigrant visa is

¹ <http://www.uscis.gov/sites/default/files/files/form/m-274.pdf> at page 13.

issued without the statement “FOR 1 YEAR,” employers should treat the endorsement as evidence of permanent residence status for 1 year from the date of admission. In your example, if the employee was admitted on December 31, 2013 and if the printed notation on the MRIV includes “For 1 year,” the document serves as an acceptable List A document for Form I-9 until December 30, 2014 regardless of the expiration date or issue date of the visa itself.

- b. Does it matter for purposes of this analysis that CBP stamped the passport but not the visa?

USCIS Response: If the stamp in the passport is endorsed CR-1 and is near but not on the immigrant visa, it is still a valid endorsement.

- c. Regardless of the answer, the M-274 is confusing on this point. Could USCIS and HSI please clarify the guidance for employers on I-9 Central and in the next issuance of the M-274, using an example similar to the one described above?

USCIS Response: USCIS will revise.

- d. In the above example, so long as the employer reverified the employee no later than December 31, 2014 (one year after passport endorsement), would ICE consider the reverification timely based on the example provided at page 58 of the M-274?

USCIS Response: One year after admission would be December 30, 2014 and ICE would consider the reverification timely if completed prior to December 31, 2014.

- 2. **Driver Authorization Cards.** Some states grant special driver authorization cards (in lieu of driver’s licenses) to residents who cannot obtain Social Security Numbers (SSNs). Recipients include undocumented workers, but also include lawfully present aliens who have no work authorization and cannot obtain an SSN, such as F-2 and H-4 visa holders. Although the holder of this document may not have had employment authorization at the time the driver authorization card was issued, he or she may have obtained valid work authorization subsequently. We understand that some of these cards have a notice that the card is not valid for federal identification purposes. May an employer accept such a document as a List B identification document together with a valid List C document for I-9 verification?

USCIS Response: A Driver Authorization or Driver Privilege Card may be acceptable for Form I-9. The employer must decide whether the card meets the description of acceptable identity documents in the regulations at 8 CFR 274a.2(b)(b)(1)(v)(B). A Driver Authorization Card may fall under the List B document described as: “A driver’s license or identification card containing a photograph, issued by a state . . . or outlying possession of the United States. If the driver’s license or identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address.” Another possible List B document is described in the regulations as: “Identification card issued by federal, state, or local

government agencies or entities provided that it contains a photograph or information such as: name, date of birth, gender, height, eye color, and address. The INA and DHS regulations prohibit an employer from hiring or continuing to employ an individual if the employer has actual or constructive knowledge that the employee is unauthorized to work.

3. **I-9 Central Guidance on Birth Certificates.** At the November 19, 2013 liaison meeting, USCIS informed AILA that it would change the language on I-9 Central regarding hospital-issued birth certificates to read:

Q. Is a birth certificate issued by a hospital an acceptable List C document?

A. In order to be acceptable for Form I-9 purposes, the document in question must be an original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States, bearing an official seal. USCIS cannot comment on whether or not a particular hospital is authorized to issue a birth certificate that meets the regulatory requirements.²

To date, the language on I-9 Central has not been changed. Please provide an update on the status of the change. In addition, in the course of an I-9 audit, does HSI investigate hospital-issued birth certificates to determine if the document is “government issued” under state law?

USCIS Response: The language above was posted on 03/28/2014.

4. **Situations Where E-Verify Documentation Requirements Differ from I-9 Requirements.** If an employee presents a document acceptable for I-9 purposes but not for E-Verify (such as a minor’s report card or a new hire’s valid student identification card without a picture) or where a person refuses to provide an SSN but properly documents the I-9, is the employer required to terminate the employee? If the employer continues to employ the worker in these circumstances but does not run an E-Verify query, does USCIS consider this grounds for terminating the E-Verify relationship? When ICE audits an employer enrolled in E-Verify, does it review E-Verify compliance? Does it notify either the employer or E-Verify of such discrepancies?

USCIS Response: E-Verify procedures and legal requirements include obtaining and recording the employee’s SSN on the Form I-9; securing a List B document with a photograph; and creating cases for all newly hired employees. E-Verify employers may choose to terminate an employee because of the employee’s refusal to provide a SSN or a List B document that includes a photograph. DHS has grounds to terminate the E-Verify Memorandum of Understanding with employers who fail to comply with E-Verify requirements. USCIS does not comment on ICE/HSI compliance activity.

5. **I-94 Automation.** At the November 19, 2013 joint meeting with HSI and the USCIS Verification Division, AILA raised the issue of problems that arise when an employee is

² <http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2013/PED-AILA-QA-Ver-Nov2013.pdf>

unable to locate his or her electronic I-94 in the CBP system and the resulting impact on I-9 compliance obligations.³ Has HSI or Verification had further discussions with CBP regarding this issue? Does HSI consider the electronic Form I-94 to be an acceptable, original document for I-9 purposes?

USCIS Response: Is AILA still seeing issues with the CBP website? Our understanding from CBP is that there are no issues with the website. A hard copy print-out of a Form I-94 obtained from CBP's website is an acceptable original document for purposes of Form I-9.

6. **Questions About the New E-Verify MOU:**

- a. Article II, Section A.11 ("Section A.11) of the new MOU prohibits employers from verifying employees hired before the effective date of the MOU (except for FAR E-Verify covered employers). Yet the M-274 recommends that where an employee presents a new identity document (for example, a new DACA-based work authorization card), the employer should conduct an E-Verify check using the original hire date, even if the original hire date preceded the employer's enrollment in E-Verify.⁴ USCIS has confirmed that the M-274 guidance remains the recommendation of the agency. However, AILA members report instances where employers who have followed the M-274 guidance have been contacted by Monitoring and Compliance and informed that such queries are contrary to the MOU and risk the employer's continuing E-Verify participation. Employers are informed this notwithstanding referencing the M-274 guidance as the reason for the query in the dialog box that appears whenever a late E-Verify submission occurs. As the new MOU was published **after** the M-274, it appears to prohibit that which the M-274 (and USCIS's earlier DACA employment verification guidance) recommends. Has USCIS changed its position from that which is included in the M-274? If not, how has USCIS instructed Monitoring and Compliance to handle these situations? How can employers who have received notices for following the M-274 be assured that their E-Verify records have not been flagged for non-compliance? How should an employer to handle this situation moving forward?

USCIS Response: USCIS continues to recommend that employers follow the guidance found in the M-274. We are considering making revisions to address issues related to timely creation of cases. M&C may contact employers to verify the reason that a case was not created in a timely manner. If M&C contacts employers as part of the compliance assistance process, employers should explain the reason for the delay.

- b. Article II, Section 14 states that violations of INA §274B (citizenship discrimination) or Title VII of the Civil Rights Act (other employment discrimination) may lead to termination of the E-Verify contract. Are **any** such violations grounds for termination or only those that involve employer misapplication of the E-Verify system? What about a settlement or consent decree where the employer does not admit liability? Does it matter for E-Verify purposes if the employer admits liability?

³ *Id.*

⁴ <http://www.uscis.gov/sites/default/files/files/form/m-274.pdf> at page 24.

USCIS Response: E-Verify approaches MOU termination on a case-by case basis. Any violation of INA § 274B (citizenship discrimination) or Title VII of the Civil Rights Act (other employment discrimination) may lead to termination of an E-Verify MOU.

- c. Article V.B.2 provides that DHS may terminate an employer's participation in E-Verify with or without notice at any time "if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements." Because federal contractor laws and many state laws require employers to participate in E-Verify, an employer should be entitled to due process before it is terminated from the program. Given this, please elaborate on the circumstances in which it would be appropriate to terminate the MOU without notice. For example, does USCIS consider **any** failure to comply with E-Verify procedures grounds for termination without notice, or does the seriousness of the failure matter? Is there a distinction between fraudulent or criminal actions and mere negligence? Has USCIS developed (or will it develop) standards for termination? Will USCIS share the documents it uses to provide notice of and the reasons for termination? Please provide an overview of the the reasons that USCIS has sought to terminate an MOU (either with or without notice) and the number of employers who have been terminated from the program to date.

USCIS Response: As stated in the MOU, E-Verify may terminate any employer's participation in E-Verify with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. E-Verify is continuing to develop its policies and procedures regarding MOU termination, and will announce any new policies and procedures, as appropriate, when they are completed. E-Verify does not comment on its specific compliance activity, up to and including termination of individual employer MOUs.

- d. Article II.16 of the MOU requires employers to report a breach of personal information. What is considered "personal information" for purposes of this section? The MOU contemplates not just known but also "suspected" breaches. Has USCIS developed (or is it developing) standards for employers to assess their reporting obligations? When a breach or suspected breach is reported, will USCIS notify affected employees? Since the effective date of the new MOU, have any employers reported a breach under this section? If so, how has USCIS handled such situations?

USCIS Response: USCIS continues to develop it policies and procedures in this area, and intends to issue additional guidance for employers with respect to handling breaches of personal information. USCIS has not, to date, received any report of a breach under this section of the MOU.

- e. We understand that employers already enrolled in the program are not required to

execute the new MOU and are automatically bound by its provisions. What steps has USCIS taken to make sure that E-Verify employers are aware of the new rights and obligations under the MOU?

USCIS Response: USCIS implemented a comprehensive communications plan to message the release of the new and revised E-Verify MOUs. This included messaging via stakeholder engagements in January that discussed the new and revised E-Verify MOU's and provided a question and answer session, notification to employers via E-Verify, E-Verify Connection Newsletter, USCIS Blog, through various USCIS websites and a MOU Fact Sheet was posted to the E-Verify website.

7. **Mitigation of Non-Compliance:** Please comment on “best practices” for employers who find themselves in the following situations and whether any of these scenarios jeopardize the employer’s continuing good standing in the E-Verify program:

- a. Employer is enrolled in E-Verify but failed to submit queries or stopped submitting queries.

USCIS Response: If the employer inadvertently failed to create a case in E-Verify by the third business day after an employee starts work for pay, it should bring itself into compliance immediately by creating a case for that employee.

- b. Employer discovers that multiple HR representatives are using the same log in, even though all are authorized users.

USCIS Response: Sharing of log-in and personal passwords is a violation of the E-Verify MOU (reference Article II A.15) and could result in a compromise of personal information and loss of access to E-Verify. If this type of activity is discovered, the employer’s E-Verify Program Administrator should report the misuse to E-Verify Customer Support at 888-464-4218 and ensure that each authorized user obtains an individualized password.

- c. Employer overlooked a group of some, but not all new hires, and needs to run late queries. Does E-Verify want to know in advance about what the employer will do?

USCIS Response: Yes, E-Verify should be notified of this circumstance. An employer who learns that it inadvertently failed to create a case by the third business day after the employee starts work for pay should bring itself into compliance immediately by creating a case for the employee.

- d. Employer has multiple MOUs and wants to consolidate under a single document without losing historical information. Can the employer run all new hires under the desired MOU but not terminate the others so it has access to historical information?

USCIS Response: The employer has the option of retaining a historical record of cases created in E-Verify by creating and retaining an E-Verify User Audit Report. After

running the report the employer could then terminate accounts they are no longer using. Currently, there is no available process to consolidate E-Verify accounts.

- e. All registered users and administrators no longer work for the employer and no one has access to the system to update the employer's profile and/or enroll new administrators or users.

USCIS Response: The employer should contact E-Verify Customer Support at 888-464-4218 for assistance with updating their profile and gaining access to the account.

- f. Are there any situations where it is preferable for the employer to terminate the MOU and re-enroll?

USCIS Response: Yes, there are situations where it is preferable for the employer to terminate the MOU and re-enroll. These circumstances may include:

- The employer no longer exists;
- Closing the account is necessary to protect the account from unauthorized access;
- An employer has duplicate or unnecessary accounts;
- An employer needs to re-register in order to change its E-Verify access method; or,
- E-Verify determines that closing the account is necessary based on the requirements of law or policy.

8. **Monitoring and Compliance Activity.** We understand that Monitoring and Compliance is looking at 17 behaviors which might warrant a site visit or other action from E-Verify. Without disclosing any confidential information, can USCIS confirm that E-Verify subjects employers to such scrutiny only after a USCIS analyst reviews the situation to determine that contact is warranted based on the totality of the circumstances? Put another way, does E-Verify automatically contact the employer based on a single instance of one of these behaviors, or does judgment about the employer's overall conduct and the seriousness of the issue come into play? If a single instance can result in a contact, can E-Verify share which of the behaviors will result in the contact?

USCIS Response: E-Verify does not comment on its specific Monitoring and Compliance procedures.

9. **Data Purging.** At the November 19, 2013 meeting, USCIS informed AILA that under government record-keeping requirements, E-Verify must "archive" data once it has been stored for ten years. However, many employers are required to retain I-9 forms that were completed more than 25 years ago. Has thought been given to extending E-Verify data retention requirements so that they better align with the employer's obligation to maintain I-9 forms? Is "archiving" data the same as destroying it for practical purposes? Will USCIS notify employers before archiving their data?

USCIS Response: Yes, USCIS is working with the National Archives and Records Administration (NARA) to review its retention schedule for E-Verify records.

10. **Web-Based Services.** Did USCIS eliminate the “E-Verify/TNC/Print” function from the newest version of web-services (Release 25) without substituting “E-Verify/FAN/Print?” If so, are all employers and employees obliged to sign electronically, and is this just for web-users or all users?

USCIS Response: No. E-Verify added a new system feature which generates a PDF for the Further Action Notice (FAN); and, the E-Verify Web services interface control agreement (version 25) implemented a new function to download the PDF.

E-Verify policy requires that both the employer and employee must sign and date the FAN. Employers must follow E-Verify guidance if they elect to use electronic signatures.

11. **Updates:**

- a. At the November 19, 2013 meeting, USCIS informed AILA that future E-Verify releases would enable employers who terminate an MOU to have continued access to prior records and/or allow transfer of data to a new account number. What is the status of this development? Is there a target date for the upgrade?

USCIS Response: E-Verify is actively pursuing these enhancements and intends to announce when these features are complete.

- b. At past liaison meetings, we discussed the desirability of having a single cross agency protocol for employees with only one name, as the current USCIS and SSA naming protocols are different regarding the use of “FNU” versus “LNU.” USCIS expressed an interest in leading a cross-agency effort to create a unified protocol. Is this project underway? Can you report on status?

USCIS Response: E-Verify is developing the requirements for an enhancement to convert unknown, FNU, LNU to appropriate naming conventions for the agency records that are being compared to information provided during the initial verification process. However, there is no cross-agency effort to create a unified protocol for employees using only one name.

- c. Please provide an update on the RIDE program including whether there are any new participants on the horizon.

USCIS Response: The RIDE program includes four participating states—Mississippi, Florida, Idaho, and Iowa. USCIS continues to have discussions with additional states regarding future participation. We will announce new state partnerships as we formalize agreements with them.

- d. How many desk reviews and site visits were completed in FY2013? Is there a specific budget for these items and targets for FY2014?

USCIS Response: M&C continues to conduct desk reviews and site visits to assist E-Verify employers and with increased participation in E-Verify, expects these activities to increase.

- e. Please provide an update on the number of cases USCIS has referred to OSC based solely on a high percentage of lawful permanent residents providing green cards in the I-9 process. Have there been occasions when USCIS contacted the employer about its practices rather than making a referral to OSC?

USCIS Response: Referrals to OSC vary from month-to-month. There are cases where M&C contacts employers directly for compliance assistance without referring them to OSC.

- f. How many TNCs have been issued since the adoption of the protocol requiring a TNC when a Social Security card has been overused in E-Verify queries?

USCIS Response: USCIS cannot comment on the number of TNCs issued because of overuse of SSNs.

- g. How many self-check queries were made in FY2013? How many have been made to date in FY2014?

USCIS Response: In FY 2013, Self Check processed 79,334 queries. As of March 27, Self Check has processed 21,324 queries in FY 2014.

12. **SSA no longer printing certain SSN receipts:** SSA has announced that effective August 1, 2014, it is discontinuing the practice of giving "this number belongs to this name" notice. This is the SSA notice-type that is not acceptable as a receipt for I-9 purposes. (We have tried to learn more about the SSA change, and from what we can ascertain, it appears that the replacement receipt (which is the same as the applied for receipt as you will recall) will still be available, but it is far from clear. See the attached SSA notice--<http://www.socialsecurity.gov/pubs/EN-05-10544.pdf>.

- Has Verification had any discussions with SSA about this development?
- Is it your understanding that the SSA receipt which confirms that the employee has applied for a card (and which is a much-used I-9 list C document) will still be immediately available upon application?
- If this has not been confirmed with SSA, would Verification connect with its resources at SSA (after our meeting of course) on this issue and then follow-up with AILA about what it learns?

USCIS/SSA Response: An individual needing a replacement SSN card can apply for it, with the required evidence, in one of the SSA field offices or Social Security Card

Centers. The individual will obtain the replacement card in 7 to 10 business days. Upon request, an individual will receive a receipt showing that he or she applied for a replacement SSN card if the individual successfully completed an application and SSA determined that no additional action is necessary before the replacement card is processed (for example, verification or translation of documents).